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Attorneys for the Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

| | | |
|---------------------------|---|---------------------------|
| UNITED STATES OF AMERICA, |) | No. 3:16-cr-00086-SLG-DMS |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| |) | |
| JOHN PEARL SMITH, II, |) | |
| |) | |
| Defendant. |) | |

GOVERNMENT’S AMENDED NOTICE OF EXPERT EXAMINATION

NOW COMES the United States of America, by E. Bryan Wilson, Acting United States Attorney for the District of Alaska, and Karen Vandergaw and Christopher

Schroeder, Assistant United States Attorneys, and Department of Justice Trial Attorney James D. Peterson, and files this notice pursuant to the Court's June 2, 2021 Order Regarding Rule 12.2 Filings. ECF No. 1073. Specifically, the government provides written notice that:

1. The government expert Dr. Park Dietz will conduct an examination of the defendant starting the week of July 19, 2021, starting at 10:00 am.
2. The specific nature the government's psychological testing will include "an interview of Mr. Smith" that encompasses "the same topics as the defense neuropsychiatrist, specifically 'establishing rapport, asking Mr. Smith open ended questions about his interests, observing how he presents self, processes information, how he uses language, and observing his functioning and any symptoms' and answering any questions Mr. Smith may have for the expert." See ECF No. 1073, pgs. 5-6. The government requests the Court to reconsider the ruling on June 2, 2021, in order to permit the government to conduct more broad questioning of the defendant so that it can adequately rebut the defense mental health mitigation. See Declaration of Park Dietz, attached as Exhibit 1.¹ The government requests authorization to conduct a "basic mental health interview" as outlined by Dr. Dietz in his attached Declaration.

¹ Given the Court's prior ruling concerning the scope of permissible testing, as well as the imposed requirement that all psychological testing be recorded, the government and Dr. Denney have elected not to have Dr. Denney participate at this point in any testing or evaluation of the defendant. If permitted, the government proffers that Dr. Denney would like to perform the following testing to identify neurocognitive compromise contributing to possible mental disease or defect: Conners' Continuous Performance Test, Third Edition (CPT-3); Wechsler Adult Intelligence Scale-IV (WAIS-IV); Neuropsychological Assessment Battery (NAB); Trail Making Test, Parts A & B; Finger Tapping Test; Grooved Pegboard Test; Controlled Oral Word Association Test; Wisconsin Card Sorting Test; Test of Premorbid Functioning Wide Range

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3. Pursuant to the Court's February 12, 2020, Omnibus Order Regarding Rule 12.2 Procedures, the government hereby formally requests the defense to provide to government examiners "all of Mr. Smith's past medical records that were provided to the testifying defense mental health experts" at least three weeks prior to the July 19, 2021, testing. ECF No. 683. For purposes of this notice and demand, and the government's interpretation of the Court's February 12, 2020, Omnibus Order Regarding Rule 12.2 Procedures, the term "medical records" includes, but is not limited to, all mental health records as well. *See* ECF No. 683.

Conclusion

WHEREFORE, the government respectfully files this notice pursuant to the Court's June 2, 2021, Order Regarding Rule 12.2 Filings. ECF No. 1073.

Respectfully Submitted,

E. BRYAN WILSON
Acting United States Attorney

/s/ James D. Peterson
JAMES D. PETERSON
Trial Attorney
United States Department of Justice

Achievement Test-5; Minnesota Multiphasic Personality Inventory-2 (MMPI-3); Validity tests deemed clinically appropriate for Mr. Smith.

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CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record.

/s/ James D. Peterson

James D. Peterson,
Trial Attorney
Capital Case Section
United States Department of Justice